

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) Magistrate Case No.: 07CR3238-WQH
Plaintiff,)
v.) FINDINGS OF FACT AND ORDER
Juan Herman LEMUS,) OF DETENTION
Defendant.)
_____)

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 et seq.), a detention hearing was held on December 14, 2007, to determine whether defendant Juan Herman LEMUS should be held in custody pending trial on the grounds that Defendant is a danger to the community. Assistant U. S. Attorney John F. Weis appeared on behalf of the United States. Retained counsel Michael Stein appeared on behalf of the Defendant.

Based on the evidence proffered by the United States and the Defendant, the Pretrial Services's report, and the Indictment issued against the Defendant in the Southern District of California, the Court concluded that the facts established by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of the community.

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FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged (18 U.S.C. §3142(G)(1))

4 1. On November 29, 2007, a federal grand jury for the Southern District of
5 California returned a one-count indictment, Criminal Case No.: 07CR3238-WQH, charging defendant
6 with Felon in Possession of a Firearm and Ammunition, in violation of 21 U.S.C. § 924(a)(2) and
7 Criminal Forfeiture, Title 18 U.S.C. § 924(d). The Indictment alleges that Defendant knowingly and
8 unlawfully possessed a firearm, in and affecting commerce, to wit, a loaded Sturm & Ruger pistol,
9 Model P95DC, 9 mm caliber with nine (9) rounds of ammunition. Therefore, probable cause exists to
10 believe the Defendant committed the charged offenses. A detention hearing was held on December 14,
11 2007, and the Court ordered the Defendant be detained as a danger to the community.

12 2. The charged offense is an offense punishable by a maximum term of
13 imprisonment of 10 years.

14 3. According to the United States Sentencing Guidelines, the Base Offense level is
15 20, See USSG § 2K2.1(4)(B). Even assuming the Defendant's criminal history score places him in
16 Criminal History Category II, see USSG § 4A1.1. The sentencing range for the Defendant is 37-46
17 months in prison.

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2)):

19 1. The Indictment filed on November 29, 2007, in the Southern District of
20 California, alleges that Defendant being a person who had previously been convicted in a court of a
21 felony, to wit in the Superior Court of California, County of Imperial, on or about August 11, 2002, in
22 case number CF-8542, of accessory after the fact, in violation of California Penal Code Section 32,
23 knowingly and unlawfully possess a firearm, in and affecting commerce, to wit, a loaded Sturm & Ruger
24 pistol, Model P95DC, 9 mm caliber, serial number 312-62717, with nine (9) rounds of ammunition.
25 On November 29, 2007, a Warrant for Defendant's arrest was issued.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(G)(3))

- 27 1. The Defendant is a naturalized United States citizen.
28 2. The Defendant resides in Calexico.

- 1 3. The Defendant has real property in Imperial County.
 2 4. The Defendant has family residing in the United States.
 3 5. The Defendant has the following criminal history:

4 11/24/92 - 187 PC Murder/GBI /Used weapon - Discharged received by CAPA
 5 Youth Authority.

6 03/15/05 - Count 1: 135 PC Destroy/conceal evidence
 7 Count 2: 246 PC Shoot at inhabited welling/vehicle/etc
 7 Count 3: 32 PC Accessory
 7 - 180 days jail, imposition sentence suspended, 36 months probation.

8 05/25/05 - 11378 HS Possess control substance for sale
 9 11359 HS Possess Marijuana for sale
 9 1202.2 PC Probation violation:REVOKE

10 08/15/06 - 22350 VC Unsafe Speed for prevailing conditions - Bail forfeiture, fine

11 08/24/06 - WARRANT 11378 HS Possession control substance for sale
 12 WARRANT 11379 (B) HS Transport for/sale controlled substance
 12 between CO - 01/18/08 - Readiness hearing scheduled

13 01/25/07 - Count 1: 22349(A) VC Exceeding maximum speed limit
 14 Count 2: 4454 (A) VC Failure to carry registration card in vehicle
 14 - Bail forfeiture, fine

15 03/09/07 - WARRANT 11378 HS Possess control substance for sale
 16 WARRANT 11379 HS Transport/etc control substance

17 D. Nature and Seriousness of Danger Posed by Release (18 U.S.C. § 3142(g)(4))

18 1. The Defendant's juvenile adjudication and adult conviction involving a crime of
 19 violence weighs heavily in finding that the Defendant poses a danger to the community.

20 II

21 REASONS FOR DETENTION

22 A. There is probable cause to believe that the Defendant committed the offenses charged in
 23 Southern District of California, Indictment No. 07CR3238-WQH.

24 B. Defendant has a substantial criminal history including crimes of violence and the instant
 25 offense involves possession of a firearm.

26 C. The instant offense involves a firearm.

27 Thus, the Court finds that the Government has sustained its burden of demonstrating by
 28 clear and convincing evidence, that the Defendant is a danger to the community and that there are no

1 conditions or combination of conditions that would reasonably assure the safety of the community.

2 III

3 ORDER

4 IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

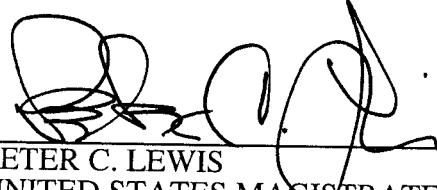
5 IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney
6 General or her designated representative for confinement in a corrections facility separate, to the extent
7 practicable, from persons awaiting or serving sentences or being held in custody pending
8 appeal. The Defendant shall be afforded reasonable opportunity for private consultation with counsel.

9 While in custody, upon order of a court of the United States or upon the request of an attorney
10 for the United States, the person in charge of the correctional facility shall deliver the Defendant to the
11 United States marshal for the purpose of an appearance in connection with a court proceeding or any
12 other appearance stipulated to by defense and government counsel.

13 THIS ORDER IS ENTERED WITHOUT PREJUDICE.

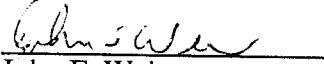
14 IT IS SO ORDERED.

15 DATED: 12-21-07.


16 PETER C. LEWIS
17 UNITED STATES MAGISTRATE JUDGE

18 Prepared by:

19 KAREN P. HEWITT
20 United States Attorney

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22 John F. Weis
23 Assistant U. S. Attorney

24 cc: Michael Stein
25 Counsel for Defendant

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